IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 691 OF 2006

Bachcha Chatradhari Chauhan ..Petitioner

Vs.

Republican Education Society
Through the President and ors. ..Respondents

Mr. N.R. Bubna for petitioner.
Mr. P.R. Arjunwadkar for respondent nos.1 and 2.
Mr. R.S. Apte for respondent no.3.
Mr. M.H. Solkar, AGP for respondent no.4.

**CORAM: B.H. MARLAPALLE, J.**

**Date : August 25, 2006.**

**P.C.:**

1. Heard Mr. Bubna the learned counsel for the petitioner.

2. Rule.

3. Mr.Arjunwadkar waives service for respondent nos.1 and 2, Mr.Apte waives service for respondent no.3 and Mr. Solkar, AGP, waives service for respondent no.4.

4. Though the notice before admission was issued on 23/7/2006, none of the respondents have filed affidavit in reply opposing this petition.

5. The petition is taken up for final hearing forthwith as the impugned order arises from the rejection of the prayer for condonation of delay in entertaining an appeal by the School Tribunal.

6. The alleged termination order was dated 3/5/2005 and against the said order of termination the petitioner moved an appeal along with application for condonation of delay on or about 8/9/2005 and by the impugned order dated 11/10/2005 the said application came to be rejected. The School Tribunal held that the delay caused of 95 days was not explained and in any case in the application for condonation of delay no reasons were set out, as per Mr.Arjunwadkar, the learned counsel for the respondent nos.1 and 2. He, therefore, submitted that this petition is not worth entertaining.

7. It is a fact that appeal is required to be filed within 30 days from the date of termination. In

the instant case though it is claimed that the date of termination was 3/5/2005, the appeal was moved 95 days beyond limitation and under Section 9 of the MEPS Act, it was required to be moved within 30 days from the said date. The petitioner-teacher contended that the order of termination dated 3/5/2005 was served on him only on 8/8/2005 and, therefore, the appeal filed on 8/9/2005 was within limitation. The School Tribunal did not agree with these submissions made by the petitoner-teacher and it proceeded to reject the application by the impugned order. The application filed by the petitioner for condonation of delay states that the order dated 3/5/2005 was served for the first time on him on 8/8/2005. In the application dated 4/5/2005 addressed to the Head Master, he informed that when he reported for duty on 3/5/2005 the Peon concerned did not allow him to sign the school teachers muster roll and when he inquired about the reasons for the same, he was informed by the Head Master that he was removed from service and, therefore, when he approached the Education Officer, Thane Municipal Corporation Education Board, the Management by letter dated 5/5/2005 was called upon to furnish their explanation as to why the petitioner was

not being allowed to report for duty.

8. An Appeal is a statutory remedy and it should not be allowed to go in default. Even as pr the School Tribunal there was delay of about 95 days and though the School Tribunal states that no reasons were explained, the following averments made in the application for condonation of delay would indicate that the Tribunal took a hyper-technical approach:-

> "....The appellant on receiving impugned termination order was shocked and came under deep mental depression. The appellant therefore was not in a position to take decision as to future course of action. The appellant thereafter contacted an advocate who informed him that appeal was required to be filed within 30 days of receipt of termination order.."

9. In these circumstances, it was necessary for the School Tribunal to hear the appeal on its own merits by condoning the delay. The approach of the School Tribunal in rejecting the application for

condonation of delay is unsustainable.

. Section 9(2) and (3) of the M.E.P.S. Act, 1977 reads as under:-

> "9. (1) .....
>
> (2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:
>
> . Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.
>
> (3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period."

. It does not appear from the impugned order that any evidence was recorded by the Tribunal in support of the application for condonation of delay. The impugned order is, therefore, unsustainable and this was a fit case where the delay caused in filing the appeal was required to be condoned.

10. Hence, the petition succeeds and the same is

hereby allowed partly. The impugned order is, therefore, quashed and set aside and the application for condonation of delay stands allowed. The School Tribunal is directed to register the appeal of the petitioner and hear and decide the same as per law as expeditiously as possible and preferably within six months from the date of receipt of the writ from this court. The petitioner shall by way of costs remit an amount of Rs.1000/- with the Maharashtra State Legal Services Authority within a period of two weeks from today. The parties to appear before the School Tribunal on 1/9/2006.

11. Rule is made absolute accordingly.

**(B.H. Marlapalle,J.)**